“CONTRACTOR SUPPORT ON THE BATTLEFIELD” -- AN INDUSTRY PERSPECTIVE

PRESENTATION TO
DEFENSE ACQUISITION EXCELLENCE COUNCIL
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WHAT IS THE "BATTLEFIELD"?

Various terms used randomly (battlefield, theater of operations, area of operation, military operation, zone of conflict, zone of special danger, joint operations)

ACTIONS:

- Develop consistent terms for the various actions and geographic area(s)
- Permit designation at the lowest command level consistent with operational responsibility

Note: Risk issues and insurance costs vary according to the location

COMBATANT STATUS

- When is a contractor in “combatant” status? (Taliban precedent)
- Does carrying a firearm or wearing a distinctive uniform change the situation?

ACTIONS

- What DoD guidance exists on definitions?
- When/how is contractor advised of combatant status?
- Who is authorized to approve a contractor employee carrying firearms (other than specific contractual performance requirements such as security functions)?

STATUS OF FORCES AGREEMENTS (SOFAs)

SOFAs are not readily available to government employees and rarely available to contractors

ACTIONS:

- Extract key contractor-related details from existing SOFAs and make available to industry or affected contractors
- Develop “standard” contractor coverage language for modifications to existing SOFAs and for new agreements
- Consider DD 489 (Geneva identity cards) for contractors

Note: HQUSAEUR/7A (Dep CoS Personnel and Info Mgmt) is DoD Executive Agent for SOFA

CONTRACT CLAUSES/ MODIFICATIONS

- Differences exist among various contractual events:
  - Existing contract for covered CoB work
  - Existing contract with new or added CoB work
  - New contract for new CoB work

  ACTIONS
  - Issue guidance to CO's on modifications, pricing adjustments, T&C changes, and fiscal law issues relating to contingent liability/Anti-Deficiency Act applicability relating to changed or new CoB work.
  - DoD take lead for OFAC licenses/waivers for entry of people and necessary equipment into sanctioned countries

DEFENSE BASE ACT AND OTHER INSURANCE COVERAGE

- The Defense Base Act coverage is mandatory when contract-ing for services to be performed overseas by U.S. contractors
- Required contract clauses not always used in DoD contracts
- No existing DoD-wide (or service-wide) DBA insurance program
- In CoB work, don't make assumption of risk an award discriminator

ACTIONS

- Issue policy letter to insert the DBA clause in all appropriate contracts without the need for new consideration
- Quickly develop a service-wide (or DoD-wide) DBA program similar to State Department and USAID
- Address additional insurance and liability coverage requirements

JUDICIAL APPLICATION

Coverage of the Geneva Convention and the UCMJ for contractors is unclear or unknown. UCMJ applies to civilians only “in time of (declared) war”; Congress has acted!

ACTIONS

- Develop and make available standard guidance and instructions

Note: Is there guidance on the scope of coverage of the “Military Extraterritorial Jurisdiction Act” [P.L.106-523] that expands criminal jurisdiction of the Department of Justice, including for contractors, deployed OCONUS?

MEDICAL/EVACUATIONS

- Availability of medical facilities and transport for medical emergency and/or evacuation
- Voluntary or mandatory evacuation situations based on threat conditions
- Implications for long-term medical/insurance obligations (Gulf War Syndrome)

Actions:

- Clarify DoD policies on availability of medical facilities and circumstance and authorities for directing evacuations
- Develop uniform treatment for homogenous local areas

EDUCATION

- Substantial information exchange between DoD and industry is needed immediately– even if only on the contractual issues

ACTION

  - DAEC (or other DoD organizational sponsor) promptly conduct joint DoD-industry symposium on contractor support issues

OTHER ISSUES

- Contractual issues (including cost and liability for unusually hazardous risk requirements (e.g., destroying WMD)
- Treatment for excusable delay and changed circumstances
- Access to special clothing, equipment, and vaccines
- Others?

QUESTIONS?

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